

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601

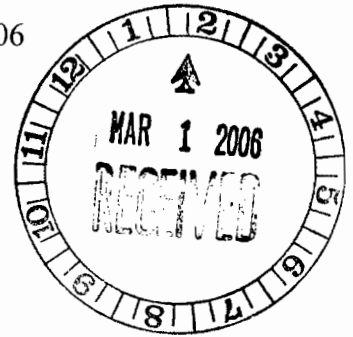
(202) 263-4152
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E1-1935
ORIGINAL

March 1, 2006

VIA HAND DELIVERY - RETURN COPY

Case Control Unit
Attention: Mr. Troy Brady
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423



Dear Mr. Brady:

This refers to STB Docket No. AB-988X, Nebkota Railway, Inc.—Abandonment Exemption—In Sheridan and Cherry Counties, NE, and to the Environmental Assessment, served January 31, 2006.


Attached are the responses of the National Park Service, Midwestern Regional Office, the U.S. Department of Interior's Fish and Wildlife Service, the U.S. Environmental Protection Agency, Region VII and Sheridan County.

Also enclosed are copies of my letters to the National Geodetic Survey and Cherry County, dated February 1, 2006, and of my follow-up letters, dated February 15, 2006. To date I have received a response from neither one.

Nebkota Railway, Inc., believes that it has satisfied the recommendations of the Environmental Assessment and that no conditions should be attached to the Board's Decision granting abandonment authority.

Two copies of this letter are enclosed. A third copy is enclosed to be stamped to acknowledge the Board's receipt of it and to return via the messenger.

Sincerely yours,


Fritz R. Kahn



United States Department of the Interior

National Park Service

Midwest Region
601 Riverfront Drive
Omaha, Nebraska 68102-4226



L76(MWR-PCL/PC)

Mr. Fritz R. Kahn, P.C.
Law Offices
Eighth Floor
1920 N Street NW.
Washington, D.C. 20036-1601

Dear Mr. Kahn:

We have received your letter of February 1, regarding the proposed abandonment of the Rushville-to-Merriam rail line in Sheridan and Cherry Counties, Nebraska (Surface Transportation Board (STB) Docket No. 988X). We also received your letters of October 24, 2005, and December 1, 2005, referenced in your latest letter. You have specifically requested our comments on this proposed abandonment. We have no comments on the proposed abandonment since we manage no property in the vicinity of the proposal, and no resources of interest to the National Park Service exist in the vicinity of the proposal.

We appreciate the expression of concern by the Chief of the Section of Environmental Analysis of the STB that the comments of the National Park Service be obtained for this proposal. We believe this concern rises from the fact portions of this particular rail line have been converted to the Cowboy Trail, currently the longest rail-to-trail conversion in progress in the United States. However, the National Park Service cannot act on this or any abandonment unless members of the public or state agencies request our assistance to develop rails-to-trails. At this time, we do not have a request to do so, though we believe there is great interest in the State. Despite the conversion of previous portions of this rail line to a trail, the National Park Service has no ownership or responsibility for the trail or in its management; the State of Nebraska Game and Parks Commission has that responsibility.

We also note your attempts to call this office. Our office relocated in July of 2004, and our phone numbers have changed. Please change your contact information to the following:

Regional Environmental Coordinator
Midwest Regional Office
National Park Service
601 Riverfront Drive
Omaha, Nebraska 68102
402-661-1844
MWRO_Recplanner@nps.gov



We appreciate the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ernest Quintana". The signature is fluid and cursive, with the first name "Ernest" being more prominent than the last name "Quintana".

Ernest Quintana
Regional Director

cc:

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW. (7th Floor)
Washington, D.C. 20423-0001



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

January 13, 2006

CN: 6-6-I-078

Mr. Fritz Kahn
Eight Floor
1920 N Street, N.W.
Washington, D.C. 20036-1601

RE: Proposed Abandonment of Nebkota Railway, Incorporated, Rail Line Between Milepost 374 at Rushville, Sheridan County, and Milepost 331 at Merriman, Cherry County, Nebraska

Dear Mr. Kahn:

This responds to your letter dated October 24, 2005, requesting comments from the U.S. Fish and Wildlife Service (Service) regarding the subject project. The Service's comments and recommendations are as follows.

The Service has responsibility, under a number of authorities, for conservation and management of fish and wildlife resources. Chief among the federal statutes with which our office administers are the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 688-688d, as amended), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712, as amended), and Fish and Wildlife Coordination Act (FWCA) (48 Stat. 401; 16 U.S.C. 661 *et seq.*). Compliance with all of these statutes and regulations are required for compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347). In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote the conservation of fish and wildlife resources for the benefit of the American public.

In Nebraska, the Service has special concerns for endangered and threatened species, migratory birds, and other important fish and wildlife resources. We also are concerned about any impacts on Federal and State wildlife refuges and management areas and other public lands, as well as to other areas that support sensitive habitats. Habitats frequently used by important fish and wildlife resources are wetlands, streams, and riparian (streamside) woodlands. Special attention is given to proposed developments that include modification of wetlands, stream alteration, loss of riparian habitat, or contamination of important habitats. The Service recommends ways to avoid, minimize, rectify, reduce, or compensate for damaging impacts to important fish and wildlife resources and their habitats that may be attributed to land and water resource development proposals.

Please note that the Service's position on a project under the authorities of ESA, BGEPA, MBTA, FWCA, and NEPA cannot be assumed without our official written response. Pursuant to the "take" provisions under section 9 of ESA; 16 U.S.C. 688 (a and b) of BGEPA; and 16 U.S.C. 703 of MBTA, the project proponent is responsible for compliance with these federal laws regardless of whether the Service is able to respond within your requested time frame.

Endangered Species Act (ESA)

Section 9 of ESA prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of ESA defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Our regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. The ESA provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways: through interagency consultation for projects with federal involvement pursuant to section 7 or through the issuance of an incidental take permit under section 10(a)(1)(B) of ESA.

Pursuant to section 7 of ESA, every Federal agency, in consultation or conference with the Service, is required to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any federally listed or proposed species and/or result in the destruction or adverse modification of designated and/or proposed critical habitat. In accordance with section 7(a) (2) of ESA, the lead federal agency should determine if any federally listed threatened or endangered species and/or designated/proposed critical habitat would be directly and/or indirectly affected by this proposed project. The assessment of potential impacts (direct and indirect) must include an "affect" or "no effect" determination and be presented to the Service in writing. If the Service agrees with the lead federal agency's determination, this office would provide a letter of concurrence. If federally listed species and/or designated/proposed critical habitat would be adversely affected by this action, the lead federal agency would need to continue section 7 consultation with the Service prior to making any irretrievable or irreversible commitments of resources in support of the proposed airport improvement projects.

In accordance with section 7(c) of ESA, the Service has determined that the following federally listed species may occur in the proposed project area or be affected by the proposed project:

<u>Listed Species</u>	<u>Expected Occurrence</u>
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Migration, nesting, and wintering
Whooping Crane (<i>Grus americanus</i>)	Migration – roosting
Piping plover (<i>Charadrius melodus</i>)	Migration and nesting
Interior least tern (<i>Sterna antillarum</i>)	Migration and nesting

American burying beetle (*Nicrophorus americanus*)

Mesic tall-grass prairie and wet meadows

Western prairie fringed orchid
(*Platanthera praeclara*)

Tall-grass prairie and wet meadows

Blowout penstemon (*Penstemon haydenii*)

Sandhills – blowouts

Bald Eagle

The bald eagle, federally listed as threatened, nests, migrates, and winters statewide. Bald eagles utilize mature, forested riparian areas near rivers, streams, lakes, and wetlands and occur along all the major river systems in Nebraska. The bald eagle southward migration begins as early as October and the wintering period extends from December through March. Additionally, many bald eagles nest in Nebraska from mid-February through mid-August. Disturbances within 0.5-mile of an active nest or within line-of-sight of the nest could cause adult eagles to discontinue nest building or to abandon eggs. Human disturbances and loss of eagle wintering habitat can cause undue stress leading to cessation of feeding and failure to meet winter thermoregulatory requirements. These affects can reduce the carrying capacity of preferred wintering habitat and reproductive success for the species.

Whooping Crane

Whooping cranes, federally listed as endangered, use shallow, sparsely vegetated streams and wetlands in which to feed and roost during migration. Major river systems used by whooping cranes in Nebraska include the Platte, Loup, Republican, and Niobrara rivers. Migration periods for the whooping crane in Nebraska are from approximately March 23 through May 10 and from September 16 through November 16. Major river systems used by whooping cranes in Nebraska include the Platte, Loup, Republican, and Niobrara rivers. Ill-timed human activities in the vicinity of important roosting and feeding habitats can disturb whooping cranes. Broad, unobserved roost sites are not common on the Platte River due to flow depletions and drought.

Least Tern and Piping Plover

The least tern, federally listed as endangered, and the piping plover, federally listed as threatened, nest on unvegetated or sparsely vegetated sandbars in river channels. The nesting season for the least tern and piping plover is from April 15 through September 15. Least terns feed on small fish in the river and piping plovers forage for invertebrates on exposed beach substrates. Ill-timed human activities in the vicinity of such feeding and nesting habitats can disturb least terns and piping plovers.

American Burying Beetle

The federally endangered American burying beetle, the largest member of the carrion beetle family, is remarkably adept at locating and feeding on carrion. Carrion provides not only a food source, but also is an essential component in a complex reproductive cycle for the species which includes parental care of young. In Nebraska, the American burying beetle has been observed from April 1 to October 29, with peak periods of activity extending from June through August. Beetles overwinter as adults. Because of their habit of feeding on carrion, their sole food source, the species likely forages on roadkills found along Nebraska roadways. In Nebraska, historical

records are from Antelope, Custer, and Lancaster counties. More recent sightings are from Cherry, Dawson, Frontier, Gosper, Keya Paha, Lincoln, Brown, Holt, and Thomas counties. We are unaware of any surveys for the American burying beetle that have been completed in the area of the proposed project, particularly the area where the proposed airport improvement projects are planned. The American burying beetle is found in mesic areas such as wet meadows, riparian areas, and wetlands associated with relatively undisturbed semi-arid, sandhill and loam grasslands. Such areas have been observed to have a thick stand of grassland vegetation with some woody vegetation. Soils composed of some clay with a prominent duff (litter) layer have also been observed at these sites. If the proposed project contains suitable beetle habitat and the project activities will disturb more than 5 acres of land, the Service recommends that a qualified entomologist, that is in possession of a Federal Endangered Species Recovery Permit issued by the Service, conduct a survey in accordance with Service approved survey protocols. Results of the survey should be forwarded to this office for review and a determination whether further section 7 consultation with the Service is necessary.

Western Prairie Fringed Orchid

The western prairie fringed orchid, federally listed as threatened, inhabits tall-grass calcareous silt loam or sub-irrigated sand prairies. Declines in western prairie fringed orchid populations have been caused by the drainage and conversion of its habitats to agricultural production, channelization, siltation, road and bridge construction, grazing, haying, and the application of herbicides. Populations are known to occur in Boone, Cherry, Dodge, Garfield, Grant, Greeley, Hall, Holt, Lancaster, Loup, Madison, Otoe, Pierce, Rock, Saline, Sarpy, Seward, and Wheeler counties, and may occur at other sites in Nebraska. If potential habitat is present within the project area, the Service recommends that a survey be conducted by a botanist familiar with the species during the flowering period (i.e., mid-June to mid-July) to determine the possible occurrence of this plant. Qualifications of the surveyor, method of survey, and results of the survey should be submitted to this office for review and a determination whether further section 7 consultation with the Service is necessary.

Blowout Penstemon

Blowout penstemon is a federally endangered plant found in blowouts in the Nebraska Sandhills. The plant can be found in early successional blowout habitat where it has little competition for scarce water and nutrients from other plants. However, as blowout habitats mature and become stabilized, other plants will become established, and the blowout penstemon disappears. Artificial propagation and discovery of additional wild populations have shown that the species appears to be stable in Nebraska. The Service is aware of records in Cherry, Thomas, Garden, Hooker, Grant, Sheridan, Box Butte, and Morrill counties. Stabilization of blowouts and other disturbances that result in the physical loss of these habitats can have an adverse effect on the blowout penstemon. If the proposed project area contains blowouts, the Service recommends a survey be conducted by a qualified botanist during the time of year when the plant is blooming. Qualifications of the surveyor, method of survey, and results of the survey should be submitted to this office for review and a determination whether further section 7 consultation with the Service is necessary.

Affect/No Affect Determination

The Service recommends that the lead federal agency consider the information provided above with regard to making its assessment on the potential impacts of the proposed airport

improvement projects on federally listed species and designated critical habitat and in making the “affect/no affect determination.” Further, the Service recommends that the lead federal agency not limit its consideration of affect to just the above project information, but other potential affects as they become apparent during the course of other project studies and/or project development and modification.

Bald and Golden Eagle Protection Act (BGEPA)

The BGEPA provides for the protection of the bald and golden eagle (*Aquila chrysaetos*) by prohibition, except under certain specific conditions, the taking, possession, and commercial use of such birds. It should be determined by the project proponent and lead federal agency as to whether the proposed projects will affect either the bald or golden eagle or their habitats. If it is determined that bald and/or golden eagles will be affected by the proposed project, further coordination is warranted prior to commencement of the proposed projects.

Migratory Bird Treaty Act (MBTA)

Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712: Ch. 128 *as amended*) construction activities in grassland, wetland, stream, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of MBTA are applicable year-round, most migratory bird nesting activity in Nebraska occurs during the period of April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 15, whereas sedge wrens which occur in some wetland habitats normally nest from July 15 to September 10. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. The Service further recommends that field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) until such time as construction on the proposed project has been completed.

The Service requests that the following be provided to this office prior to construction proceeding at the proposed project site if the above conditions occur. The purpose of the request is to assist the project proponent to avoid the unnecessary take of migratory birds and the possible need for law enforcement action:

- a) A copy of any survey(s) for migratory birds done in conjunction with this proposed project, if any. The survey should provide detail in regards to survey methods, date and time of survey, species observed/heard, and location of species observed relative to the proposed project site.
- b) Written description of any avoidance measures implemented at the proposed project site to avoid the take of migratory birds.

- c) Written description of any circumstances where it has been determined by the project proponent that one or more active bird nests cannot be avoided by the planned construction activities.

Fish and Wildlife Coordination Act (FWCA)

The FWCA requires that fish and wildlife resources be given equal consideration in the planning, implementation, and operation of federal and federally funded, permitted, or licensed water resource developments. The comments in this letter are provided as technical assistance and predevelopment consultation and do not constitute a Service report under the authority of FWCA on any required federal environmental review or permit.

Wetlands, Streams, and Riparian Habitats

If wetlands or streams will be impacted by the proposed project, a Department of the Army permit from the U.S. Corps of Engineers may be needed. The Service recommends that impacts to wetlands, streams, and riparian areas be avoided or minimized. If unavoidable impacts are to occur to aquatic habitats, the Service recommends that compensation (i.e., restoration of a degraded wetland or creation) occur for like wetland type at a ratio of 2:1 (acres of wetlands restored/created to acres of wetlands impacted). For unavoidable impacts to streams, the Service recommends that stream pattern, profile, and dimension be mitigated at a ratio of no less than 1:1 (stream length and number, pattern, and length of meanders created/restored versus stream length and number, pattern, and length of meanders impacted; sequence and number of pools and riffles created/restored versus sequence and number of pools and riffles impacted). Additionally, compensation for impacts to riparian habitats should occur at a minimum ratio of 3:1 (i.e., acres of riparian habitat replaces for acres of riparian habitat impacted). The 3:1 ratio is based on the loss of the habitat and the amount of time that will be required for planted trees to reach maturity.

National Wildlife Refuges

In Nebraska, the Service manages six refuges and one wetland management district under the National Wildlife Refuge System. Based on the information provided, the Service has determined that the proposed project does not appear to impact these seven wildlife areas.

We appreciate the opportunity to review and comment on this proposed project. Should you have questions, please contact Mr. John Cochnar within our office at john_cochnar@fws.gov or (308)382-6468, extension 20. In the future, if you are requesting the Service's concurrence on proposed projects, please include your E-mail address along with your request to help us expedite a return response.

Sincerely,



John Cochnar
Acting Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Rick Schneider)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

17 FEB 2006

OFFICE OF
THE REGIONAL ADMINISTRATOR

Fritz R. Kahn, P.C.
1920 N Street, N.W. (Eighth Floor)
Washington D.C. 20036-1601

Dear Mr. Kahn:

RE: STB Docket No. 988X, Nebkota Railway, Inc – Abandonment Exemption – In Sheridan and Cherry Counties

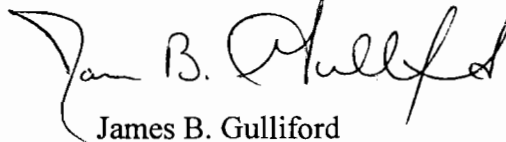
This correspondence responds to your inquiry of February 1, 2006, requesting the Environmental Protection Agency's (EPA) interest in this proposed abandonment. Environmental legacies of railway operations can include (but may not be limited to) product spills, maintenance activities-- where waste fuels and lubricants may have been discarded, wood preservative applications to ties and trestles, and rights-of-way maintenance with herbicides.

As is the case for all federal actions being reviewed through the National Environmental Policy Act (NEPA) process, it is the obligation of the lead federal agency to determine the environmental consequences of the action. The Environmental Assessment prepared by the Surface Transportation Board (STB) (Service Date – January 31, 2006) concludes that the "abandonment of the line will not significantly affect the quality of the human environment". Although EPA has no information that would refute STB's conclusion, we also did not find anything within the STB order that says that STB is withholding action on the abandonment application due to a lack of response by EPA. Please note that while we believe that this letter expresses our views on the impacts of the project based on the limited available information, it is up to the STB to determine what, if any, further consultation with EPA would be necessary to begin salvage operations.

Specific to the observation that EPA did not provide comments regarding potential Section 402 permitting requirements, please be advised that (with the exception of Tribal Reservation property) all EPA Region 7 states (Nebraska, Kansas, Iowa, and Missouri) have gained primacy for this program, and should be consulted for permit requirements whenever rail removal is specified.

For future abandonment proposals, if EPA can be of assistance within its jurisdiction or technical capabilities, please direct correspondence to the address below or contact Mr. Joseph Cothorn, NEPA Team Leader at (913) 551-7148, or cothorn.joe@epa.gov .

Sincerely,

A handwritten signature in black ink, appearing to read "James B. Gulliford". The signature is fluid and cursive, with the first name "James" and last name "Gulliford" clearly legible.

James B. Gulliford
Regional Administrator

cc: Mr. Troy Brady, Surface Transportation Board, Washington, D.C.
Mr. James Gavin, Office of Federal Activities, Washington, D.C. (via e-mail)

COMMISSIONERS MINUTES
FEBRUARY 13, 2006

The Sheridan County Commissioners met in regular session at 9 A.M. in the Commissioners Office, Courthouse. All members present. Abold made a motion to accept the agenda. Platt seconded the motion. With a voice vote all voted aye. Platt made a motion to accept the minutes of 1-30-06. Abold seconded the motion. With a roll call vote all voted aye.

The board audited and approved the claims.

Commissioner Kling presented an insurance dividend check in the amount \$16,648 that was presented to Sheridan County at the County Board Workshop.

Mike Paul, Tim McGinley and Gerry Larson brought the board concerns from the rescue squad and fire department about the E-911 addressing. They are asking that the signs get put up as soon as possible. Without the signs up someone is going to have to be reading a map and directing the driver. The departments would rather not have the name announced on the air however, until signs are posted it is about the only way to be sure of the correct location.

Paul asked if the money is set aside for the road signing. Commissioner Kling stated that the E911 fund has \$22,402 as of January 2006. The board did say that if it is in excess of that it could be paid out of Inheritance Fund and then reimbursed when monies are available in the E911 Fund. It was agreed that the Federal and State Highways, and the County Collectors Road will be signed first. The board informed the citizens that they will check with GEO COMM about the signing stage and get it going. The board gave the guys the most current available list of Sheridan County residents and their addresses. The guys thanked the board for what they have done so far and feel that once everything is in place it should all work well.

Yardley presented the board with a resolution for public hearing. Platt made a motion to sign resolution #2006-6 calling for a public hearing to discuss the vacation or abandonment of County Road #310. Abold seconded the motion. With a roll call vote all voted aye. The hearing will be March 13, 2006 at 10 A.M. in the Commissioners Room.

Yardley asked the board about Jerry Bottorff taking gravel out of the Bruns pit in trade of gravel out of the Bottorff pit once it is crushed. The board did not see any problem.

The board asked Yardley if he had any problems with the sign that the Nebraska Game and Parks have came up with to erect in Lakeside. Abold made a motion to accept the sign as presented. Platt seconded the motion. With a roll call vote all voted aye.

The board asked Yardley about the proposed abandonment of the Nebkota Railway, Inc. line between Rushville and Merriman. Yardley had no objection to the abandonment.

Yardley asked the board to watch the legislative bills that deal with the Highway Trust Funds.

Yardley asked for executive session to discuss personnel. Abold made a motion to go into executive session at 9:50 A.M. with Yardley to discuss personnel. Platt seconded the motion. With a roll call vote all voted aye.

Platt made a motion to come out of executive session at 10:05 A.M. Abold seconded the motion. With a roll call vote all voted aye. No decision was made.

Adjourn: 10:10 A.M.

Attest: Sindy L. Coburn, Co Clerk

Dan R. Kling, Chairman

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601

(202) 263-4152
FAX (202) 331-8330
e-mail: xicgc@worldnet.att.net

February 15, 2006

James R. Walpole, Esq.
General Counsel
NOAA
1315 East West Highway (#5814)
Silver Spring, MD 20910-3280

Dear Mr. Walpole:

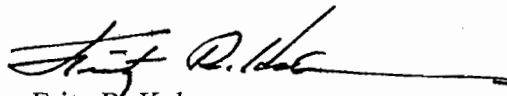
Enclosed is a copy of a letter which I sent to you two weeks ago, requesting a determination by your agency that it has no objection to the proposed abandonment of the Rushville-to-Merriman, Nebraska, line of the Nebkota Railway, Inc.

To date I have had no response.

Comments on the Surface Transportation Board's staff Environmental Assessment and its recommended condition that the abandonment cannot proceed without Nebkota Railway, Inc., having consulted with your agency are due March 2, 2006.

I surely hope that I shall hear from you or your designee before then.

Sincerely yours,


Fritz R. Kahn

enc.

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FRITZ R. KAHN, P.C.
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1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1801

(202) 263-4152
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e-mail: xicgc@worldnet.att.net

February 1, 2006

James R. Walpole, Esq.
General Counsel
NOAA
1315 East West Highway (#5814)
Silver Spring, MD 20910-3282

Dear Mr. Walpole:

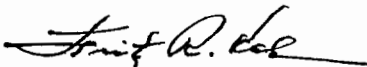
Pursuant to the regulations of the Surface Transportation Board of the U.S. Department of Transportation, I on October 24, 2005, notified the National Geodetic Survey of the proposed abandonment of the Rushville-to-Merriman, Nebraska, line of the Nebkota Railway, Inc., and inquired whether the agency had any interest in the matter.

Having received no response, I placed a follow-up telephone call on November 7, 2005, but there still was no response. On December 1, 2005, a copy of the Petition for Exemption as filed with the STB was sent to the agency.

On January 31, 2006, the Section of Environmental Analysis of the STB served its Environmental Assessment recommending that the unopposed abandonment in STB Docket No. 988X, Nebkota Railway, Inc.-Abandonment Exemption-In Sheridan and Cherry Counties, should not be allowed to be consummated for want of response from the National Geodetic Survey. A copy of the decision can be found on the STB's web page www.st.dot.gov.

Please send me a note advising that your office has no objection to the abandonment's consummation or direct this letter to the correct office which will provide me with such advice.

Sincerely yours,


Fritz R. Kahn

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601

(202) 263-4152
FAX (202) 331-8330
e-mail: xiccgc@worldnet.att.net

February 15, 2006

Mr. Jerry Adamson
Cherry County Board of Supervisors
c/o Clerk of the District Court
365 N. Main Street
Valentine, NE 69201

Dear Mr. Adamson:


Enclosed is a copy of a letter which I sent to you two weeks ago, requesting a determination by Cherry County that it has no objection to the proposed abandonment of the Rushville-to-Merriman, Nebraska, line of the Nebkota Railway, Inc.

To date I have had no response.

Comments on the Surface Transportation Board's staff Environmental Assessment and its recommended condition that the abandonment cannot proceed without Nebkota Railway, Inc., having consulted with you are due March 2, 2006.

I surely hope that I shall hear from you or your designee before then.

Sincerely yours,


Fritz R. Kahn

enc.

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WASHINGTON, D.C. 20036-1801

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FAX (202) 331-8330
e-mail: xiccg@worldnet.att.net

February 1, 2006

Mr. Jerry Adamson
Cherry County Board of Supervisors
HC 37 Box 21
Valentine, NE 69201

Dear Mr. Adamson

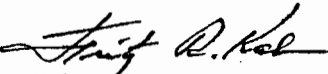
Pursuant to the regulations of the Surface Transportation Board of the U.S. Department of Transportation, I on November 10, 2005, notified the Board of Supervisors of the proposed abandonment of the Rushville-to-Merriman, Nebraska, line of the Nebkota Railway, Inc., and inquired whether the Cherry County had any interest in the matter.

On December 1, 2005, a copy of the Petition for Exemption as filed with the STB was sent to the Board of Supervisors..

On January 31, 2006, the Section of Environmental Analysis of the STB served its Environmental Assessment recommending that the unopposed abandonment in STB Docket No. 988X, Nebkota Railway, Inc.-Abandonment Exemption-In Sheridan and Cherry Counties, should not be allowed to be consummated for want of response from the Board of Supervisors. A copy of the decision can be found on the STB's web page www.st.dot.gov.

Please send me a note advising that Cherry County has no objection to the abandonment's consummation or direct this letter to the correct office which will provide me with such advice.

Sincerely yours,


Fritz R. Kahn